

111TH CONGRESS
1ST SESSION

S. 1150

To improve end-of-life care.

IN THE SENATE OF THE UNITED STATES

MAY 21, 2009

Mr. REID (for Mr. ROCKEFELLER (for himself, Ms. COLLINS, Mr. KOHL, Mr. WYDEN, and Mr. CARPER)) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To improve end-of-life care.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Advance Planning and Compassionate Care Act of
6 2009”.

7 (b) TABLE OF CONTENTS.—The table of contents of
8 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

TITLE I—ADVANCE CARE PLANNING

Subtitle A—Consumer and Provider Education

PART I—CONSUMER EDUCATION

SUBPART A—NATIONAL INITIATIVES

- Sec. 101. Advance care planning telephone hotline.
- Sec. 102. Advance care planning information clearinghouses.
- Sec. 103. Advance care planning toolkit.
- Sec. 104. National public education campaign.
- Sec. 105. Update of Medicare and Social Security handbooks.
- Sec. 106. Authorization of appropriations.

SUBPART B—STATE AND LOCAL INITIATIVES

- Sec. 111. Financial assistance for advance care planning.
- Sec. 112. Grants for programs for orders regarding life sustaining treatment.

PART II—PROVIDER EDUCATION

- Sec. 121. Public provider advance care planning website.
- Sec. 122. Continuing education for physicians and nurses.

Subtitle B—Portability of Advance Directives; Health Information Technology

- Sec. 131. Portability of advance directives.
- Sec. 132. State advance directive registries; driver's license advance directive notation.
- Sec. 133. GAO study and report on establishment of national advance directive registry.

Subtitle C—National Uniform Policy on Advance Care Planning

- Sec. 141. Study and report by the Secretary regarding the establishment and implementation of a national uniform policy on advance directives.

TITLE II—COMPASSIONATE CARE

Subtitle A—Workforce Development

PART I—EDUCATION AND TRAINING

- Sec. 201. National Geriatric and Palliative Care Services Corps.
- Sec. 202. Exemption of palliative medicine fellowship training from Medicare graduate medical education caps.
- Sec. 203. Medical school curricula.

Subtitle B—Coverage Under Medicare, Medicaid, and CHIP

PART I—COVERAGE OF ADVANCE CARE PLANNING

- Sec. 211. Medicare, Medicaid, and CHIP coverage.

PART II—HOSPICE

- Sec. 221. Adoption of MedPAC hospice payment methodology recommendations.
- Sec. 222. Removing hospice inpatient days in setting per diem rates for critical access hospitals.

- Sec. 223. Hospice payments for dual eligible individuals residing in long-term care facilities.
- Sec. 224. Delineation of respective care responsibilities of hospice programs and long-term care facilities.
- Sec. 225. Adoption of MedPAC hospice program eligibility certification and recertification recommendations.
- Sec. 226. Concurrent care for children.
- Sec. 227. Making hospice a required benefit under Medicaid and CHIP.
- Sec. 228. Medicare Hospice payment model demonstration projects.
- Sec. 229. MedPAC studies and reports.
- Sec. 230. HHS Evaluations.

Subtitle C—Quality Improvement

- Sec. 241. Patient satisfaction surveys.
- Sec. 242. Development of core end-of-life care quality measures across each relevant provider setting.
- Sec. 243. Accreditation of hospital-based palliative care programs.
- Sec. 244. Survey and data requirements for all Medicare participating hospice programs.

Subtitle D—Additional Reports, Research, and Evaluations

- Sec. 251. National Center On Palliative and End-of-Life Care.
- Sec. 252. National Mortality Followback Survey.
- Sec. 253. Demonstration projects for use of telemedicine services in advance care planning.
- Sec. 254. Inspector General investigation of fraud and abuse.
- Sec. 255. GAO study and report on provider adherence to advance directives.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) ADVANCE CARE PLANNING.—The term “ad-
4 vance care planning” means the process of—

5 (A) determining an individual’s priorities,
6 values and goals for care in the future when the
7 individual is no longer able to express his or her
8 wishes;

9 (B) engaging family members, health care
10 proxies, and health care providers in an ongoing
11 dialogue about—

12 (i) the individual’s wishes for care;

1 (ii) what the future may hold for peo-
 2 ple with serious illnesses or injuries;

3 (iii) how individuals, their health care
 4 proxies, and family members want their be-
 5 liefs and preferences to guide care deci-
 6 sions; and

7 (iv) the steps that individuals and
 8 family members can take regarding, and
 9 the resources available to help with, fi-
 10 nances, family matters, spiritual questions,
 11 and other issues that impact seriously ill or
 12 dying patients and their families; and

13 (C) executing and updating advance direc-
 14 tives and appointing a health care proxy.

15 (2) ADVANCE DIRECTIVE.—The term “advance
 16 directive” means a living will, medical directive,
 17 health care power of attorney, durable power of at-
 18 torney, or other written statement by a competent
 19 individual that is recognized under State law and in-
 20 dicates the individual’s wishes regarding medical
 21 treatment in the event of future incompetence. Such
 22 term includes an advance health care directive and
 23 a health care directive recognized under State law.

1 (3) CHIP.—The term “CHIP” means the pro-
2 gram established under title XXI of the Social Secu-
3 rity Act (42 U.S.C. 1397aa et seq.).

4 (4) END-OF-LIFE-CARE.—The term “end-of-life
5 care” means all aspects of care of a patient with a
6 potentially fatal condition, and includes care that is
7 focused on specific preparations for an impending
8 death.

9 (5) HEALTH CARE POWER OF ATTORNEY.—The
10 term “health care power of attorney” means a legal
11 document that identifies a health care proxy or deci-
12 sionmaker for a patient who has the authority to act
13 on the patient’s behalf when the patient is unable to
14 communicate his or her wishes for medical care on
15 matters that the patient specifies when he or she is
16 competent. Such term includes a durable power of
17 attorney that relates to medical care.

18 (6) LIVING WILL.—The term “living will”
19 means a legal document—

20 (A) used to specify the type of medical
21 care (including any type of medical treatment,
22 including life-sustaining procedures if that per-
23 son becomes permanently unconscious or is oth-
24 erwise dying) that an individual wants provided
25 or withheld in the event the individual cannot

1 speak for himself or herself and cannot express
 2 his or her wishes; and

3 (B) that requires a physician to honor the
 4 provisions of upon receipt or to transfer the
 5 care of the individual covered by the document
 6 to another physician that will honor such provi-
 7 sions.

8 (7) MEDICAID.—The term “Medicaid” means
 9 the program established under title XIX of the So-
 10 cial Security Act (42 U.S.C. 1396 et seq.).

11 (8) MEDICARE.—The term “Medicare” means
 12 the program established under title XVIII of the So-
 13 cial Security Act (42 U.S.C. 1395 et seq.).

14 (9) ORDERS FOR LIFE-SUSTAINING TREAT-
 15 MENT.—The term “orders for life-sustaining treat-
 16 ment” means a process for focusing a patients’ val-
 17 ues, goals, and preferences on current medical cir-
 18 cumstances and to translate such into visible and
 19 portable medical orders applicable across care set-
 20 tings, including home, long-term care, emergency
 21 medical services, and hospitals.

22 (10) PALLIATIVE CARE.—The term “palliative
 23 care” means interdisciplinary care for individuals
 24 with a life-threatening illness or injury relating to
 25 pain and symptom management and psychological,

1 social, and spiritual needs and that seeks to improve
 2 the quality of life for the individual and the individ-
 3 ual's family.

4 (11) SECRETARY.—The term “Secretary”
 5 means the Secretary of Health and Human Services.

6 **TITLE I—ADVANCE CARE** 7 **PLANNING**

8 **Subtitle A—Consumer and** 9 **Provider Education**

10 **PART I—CONSUMER EDUCATION**

11 **Subpart A—National Initiatives**

12 **SEC. 101. ADVANCE CARE PLANNING TELEPHONE HOTLINE.**

13 (a) IN GENERAL.—Not later than January 1, 2011,
 14 the Secretary, acting through the Director of the Centers
 15 for Disease Control and Prevention, shall establish and op-
 16 erate directly, or by grant, contract, or interagency agree-
 17 ment, a 24-hour toll-free telephone hotline to provide con-
 18 sumer information regarding advance care planning, in-
 19 cluding—

20 (1) an explanation of advanced care planning
 21 and its importance;

22 (2) issues to be considered when developing an
 23 individual's advance care plan;

24 (3) how to establish an advance directive;

1 (4) procedures to help ensure that an individ-
2 ual's directives for end-of-life care are followed;

3 (5) Federal and State-specific resources for as-
4 sistance with advance care planning; and

5 (6) hospice and palliative care (including their
6 respective purposes and services).

7 (b) ESTABLISHMENT.—In carrying out the require-
8 ments under subsection (a), the Director of the Centers
9 for Disease Control and Prevention may designate an ex-
10 isting 24-hour toll-free telephone hotline or, if no such
11 service is available or appropriate, establish a new 24-hour
12 toll-free telephone hotline.

13 **SEC. 102. ADVANCE CARE PLANNING INFORMATION CLEAR-**
14 **INGHOUSES.**

15 (a) EXPANSION OF NATIONAL CLEARINGHOUSE FOR
16 LONG-TERM CARE INFORMATION.—

17 (1) DEVELOPMENT.—Not later than January 1,
18 2010, the Secretary shall develop an online clearing-
19 house to provide comprehensive information regard-
20 ing advance care planning.

21 (2) MAINTENANCE.—The advance care plan-
22 ning clearinghouse, which shall be clearly identifiable
23 and available on the homepage of the Department of
24 Health and Human Service's National Clearinghouse
25 for Long-Term Care Information website, shall be

1 maintained and publicized by the Secretary on an
2 ongoing basis.

3 (3) CONTENT.—The advance care planning
4 clearinghouse shall include—

5 (A) any relevant content contained in the
6 national public education campaign required
7 under section 104;

8 (B) content addressing—

9 (i) an explanation of advanced care
10 planning and its importance;

11 (ii) issues to be considered when de-
12 veloping an individual's advance care plan;

13 (iii) how to establish an advance di-
14 rective;

15 (iv) procedures to help ensure that an
16 individual's directives for end-of-life care
17 are followed; and

18 (v) hospice and palliative care (includ-
19 ing their respective purposes and services);
20 and

21 (C) available Federal and State-specific re-
22 sources for assistance with advance care plan-
23 ning, including—

1 (i) contact information for any State
 2 public health departments that are respon-
 3 sible for issues regarding end-of-life care;

4 (ii) contact information for relevant
 5 legal service organizations, including those
 6 funded under the Older Americans Act of
 7 1965 (42 U.S.C. 3001 et seq.); and

8 (iii) advance directive forms for each
 9 State; and

10 (D) any additional information, as deter-
 11 mined by the Secretary.

12 (b) ESTABLISHMENT OF PEDIATRIC ADVANCE CARE
 13 PLANNING CLEARINGHOUSE.—

14 (1) DEVELOPMENT.—Not later than January 1,
 15 2011, the Secretary, in consultation with the Assist-
 16 ant Secretary for Children and Families of the De-
 17 partment of Health and Human Services, shall de-
 18 velop an online clearinghouse to provide comprehen-
 19 sive information regarding pediatric advance care
 20 planning.

21 (2) MAINTENANCE.—The pediatric advance
 22 care planning clearinghouse, which shall be clearly
 23 identifiable on the homepage of the Administration
 24 for Children and Families website, shall be main-

1 tained and publicized by the Secretary on an ongoing basis.

3 (3) CONTENT.—The pediatric advance care
4 planning clearinghouse shall provide advance care
5 planning information specific to children with life-
6 threatening illnesses or injuries and their families.

7 **SEC. 103. ADVANCE CARE PLANNING TOOLKIT.**

8 (a) DEVELOPMENT.—Not later than July 1, 2010,
9 the Secretary, in consultation with the Director of the
10 Centers for Disease Control and Prevention, shall develop
11 an online advance care planning toolkit.

12 (b) MAINTENANCE.—The advance care planning tool-
13 kit, which shall be available in English, Spanish, and any
14 other languages that the Secretary deems appropriate,
15 shall be maintained and publicized by the Secretary on an
16 ongoing basis and made available on the following
17 websites:

18 (1) The Centers for Disease Control and Pre-
19 vention.

20 (2) The Department of Health and Human
21 Service’s National Clearinghouse for Long-Term
22 Care Information.

23 (3) The Administration for Children and Fami-
24 lies.

1 (c) CONTENT.—The advance care planning toolkit
2 shall include content addressing—

3 (1) common issues and questions regarding ad-
4 vance care planning, including individuals and re-
5 sources to contact for further inquiries;

6 (2) advance directives and their uses, including
7 living wills and durable powers of attorney;

8 (3) the roles and responsibilities of a health
9 care proxy;

10 (4) Federal and State-specific resources to as-
11 sist individuals and their families with advance care
12 planning, including—

13 (A) the advance care planning toll-free
14 telephone hotline established under section 101;

15 (B) the advance care planning clearing-
16 houses established under section 102;

17 (C) the advance care planning toolkit es-
18 tablished under this section;

19 (D) available State legal service organiza-
20 tions to assist individuals with advance care
21 planning, including those organizations that re-
22 ceive funding pursuant to the Older Americans
23 Act of 1965 (42 U.S.C. 3001 et seq.); and

24 (E) website links or addresses for State-
25 specific advance directive forms; and

1 (5) any additional information, as determined
2 by the Secretary.

3 **SEC. 104. NATIONAL PUBLIC EDUCATION CAMPAIGN.**

4 (a) NATIONAL PUBLIC EDUCATION CAMPAIGN.—

5 (1) IN GENERAL.—Not later than January 1,
6 2011, the Secretary, acting through the Director of
7 the Centers for Disease Control and Prevention,
8 shall, directly or through grants, contracts, or inter-
9 agency agreements, develop and implement a na-
10 tional campaign to inform the public of the impor-
11 tance of advance care planning and of an individ-
12 ual's right to direct and participate in their health
13 care decisions.

14 (2) CONTENT OF EDUCATIONAL CAMPAIGN.—

15 The national public education campaign established
16 under paragraph (1) shall—

17 (A) employ the use of various media, in-
18 cluding regularly televised public service an-
19 nouncements;

20 (B) provide culturally and linguistically ap-
21 propriate information;

22 (C) be conducted continuously over a pe-
23 riod of not less than 5 years;

24 (D) identify and promote the advance care
25 planning information available on the Depart-

1 ment of Health and Human Service’s National
2 Clearinghouse for Long-Term Care Information
3 website and Administration for Children and
4 Families website, as well as any other relevant
5 Federal or State-specific advance care planning
6 resources;

7 (E) raise public awareness of the con-
8 sequences that may result if an individual is no
9 longer able to express or communicate their
10 health care decisions;

11 (F) address the importance of individuals
12 speaking to family members, health care prox-
13 ies, and health care providers as part of an on-
14 going dialogue regarding their health care
15 choices;

16 (G) address the need for individuals to ob-
17 tain readily available legal documents that ex-
18 press their health care decisions through ad-
19 vance directives (including living wills, comfort
20 care orders, and durable powers of attorney for
21 health care);

22 (H) raise public awareness regarding the
23 availability of hospice and palliative care; and

1 (I) encourage individuals to speak with
2 their physicians about their options and inten-
3 tions for end-of-life care.

4 (3) EVALUATION.—

5 (A) IN GENERAL.—Not later than July 1,
6 2013, the Secretary, acting through the Direc-
7 tor of the Centers for Disease Control and Pre-
8 vention, shall conduct a nationwide survey to
9 evaluate whether the national campaign con-
10 ducted under this subsection has achieved its
11 goal of changing public awareness, attitudes,
12 and behaviors regarding advance care planning.

13 (B) BASELINE SURVEY.—In order to
14 evaluate the effectiveness of the national cam-
15 paign, the Secretary shall conduct a baseline
16 survey prior to implementation of the campaign.

17 (C) REPORTING REQUIREMENT.—Not later
18 than December 31, 2013, the Secretary shall
19 report the findings of such survey, as well as
20 any recommendations that the Secretary deter-
21 mines appropriate regarding the need for con-
22 tinuation or legislative or administrative
23 changes to facilitate changing public awareness,
24 attitudes, and behaviors regarding advance care

1 planning, to the appropriate committees of the
2 Congress.

3 (b) REPEAL.—Section 4751(d) of the Omnibus
4 Budget Reconciliation Act of 1990 (42 U.S.C. 1396a note;
5 Public Law 101–508) is repealed.

6 **SEC. 105. UPDATE OF MEDICARE AND SOCIAL SECURITY**
7 **HANDBOOKS.**

8 (a) MEDICARE & YOU HANDBOOK.—

9 (1) IN GENERAL.—Not later than 60 days after
10 the date of enactment of this Act, the Secretary
11 shall update the online version of the “Planning
12 Ahead” section of the Medicare & You Handbook to
13 include—

14 (A) an explanation of advance care plan-
15 ning and advance directives, including—

16 (i) living wills;

17 (ii) health care proxies; and

18 (iii) after-death directives;

19 (B) Federal and State-specific resources to
20 assist individuals and their families with ad-
21 vance care planning, including—

22 (i) the advance care planning toll-free
23 telephone hotline established under section
24 101;

- 1 (ii) the advance care planning clear-
- 2 inghouses established under section 102;
- 3 (iii) the advance care planning toolkit
- 4 established under section 103;
- 5 (iv) available State legal service orga-
- 6 nizations to assist individuals with advance
- 7 care planning, including those organiza-
- 8 tions that receive funding pursuant to the
- 9 Older Americans Act of 1965 (42 U.S.C.
- 10 3001 et seq.); and
- 11 (v) website links or addresses for
- 12 State-specific advance directive forms; and
- 13 (C) any additional information, as deter-
- 14 mined by the Secretary.

15 (2) UPDATE OF PAPER AND SUBSEQUENT
 16 VERSIONS.—The Secretary shall include the infor-
 17 mation described in paragraph (1) in all paper and
 18 electronic versions of the Medicare & You Handbook
 19 that are published on or after the date that is 60
 20 days after the date of enactment of this Act.

21 (b) SOCIAL SECURITY HANDBOOK.—The Commis-
 22 sioner of Social Security shall—

- 23 (1) not later than 60 days after the date of en-
- 24 actment of this Act, update the online version of the

1 Social Security Handbook for beneficiaries to include
 2 the information described in subsection (a)(1); and
 3 (2) include such information in all paper and
 4 online versions of such handbook that are published
 5 on or after the date that is 60 days after the date
 6 of enactment of this Act.

7 **SEC. 106. AUTHORIZATION OF APPROPRIATIONS.**

8 There is authorized to be appropriated for the period
 9 of fiscal years 2010 through 2014—

10 (1) \$195,000,000 to the Secretary to carry out
 11 sections 101, 102, 103, 104 and 105(a); and

12 (2) \$5,000,000 to the Commissioner of Social
 13 Security to carry out section 105(b).

14 **Subpart B—State and Local Initiatives**

15 **SEC. 111. FINANCIAL ASSISTANCE FOR ADVANCE CARE**
 16 **PLANNING.**

17 (a) LEGAL ASSISTANCE FOR ADVANCE CARE PLAN-
 18 NING.—

19 (1) DEFINITION OF RECIPIENT.—Section
 20 1002(6) of the Legal Services Corporation Act (42
 21 U.S.C. 2996a(6)) is amended by striking “clause (A)
 22 of” and inserting “subparagraph (A) or (B) of”.

23 (2) ADVANCE CARE PLANNING.—Section 1006
 24 of the Legal Services Corporation Act (42 U.S.C.
 25 2996e) is amended—

1 (A) in subsection (a)(1)—

2 (i) by striking “title, and (B) to
3 make” and inserting the following: “title;
4 “(C) to make”; and

5 (ii) by inserting after subparagraph
6 (A) the following:

7 “(B) to provide financial assistance, and make
8 grants and contracts, as described in subparagraph
9 (A), on a competitive basis for the purpose of pro-
10 viding legal assistance in the form of advance care
11 planning (as defined in section 3 of the Advance
12 Planning and Compassionate Care Act of 2009, and
13 including providing information about State-specific
14 advance directives, as defined in that section) for eli-
15 gible clients under this title, including providing
16 such planning to the family members of eligible cli-
17 ents and persons with power of attorney to make
18 health care decisions for the clients; and”;

19 (B) in subsection (b), by adding at the end
20 the following:

21 “(2) Advance care planning provided in accordance
22 with subsection (a)(1)(B) shall not be construed to violate
23 the Assisted Suicide Funding Restriction Act of 1997 (42
24 U.S.C. 14401 et seq.).”.

1 (3) REPORTS.—Section 1008(a) of the Legal
 2 Services Corporation Act (42 U.S.C. 2996g(a)) is
 3 amended by adding at the end the following: “The
 4 Corporation shall require such a report, on an an-
 5 nual basis, from each grantee, contractor, or other
 6 recipient of financial assistance under section
 7 1006(a)(1)(B).”.

8 (4) AUTHORIZATION OF APPROPRIATIONS.—
 9 Section 1010 of the Legal Services Corporation Act
 10 (42 U.S.C. 2996i) is amended—

11 (A) in subsection (a)—

12 (i) by striking “(a)” and inserting
 13 “(a)(1)”;

14 (ii) in the last sentence, by striking
 15 “Appropriations for that purpose” and in-
 16 serting the following:

17 “(3) Appropriations for a purpose described in para-
 18 graph (1) or (2)”;

19 (iii) by inserting before paragraph (3)
 20 (as designated by clause (ii)) the following:

21 “(2) There are authorized to be appropriated to carry
 22 out section 1006(a)(1)(B), \$10,000,000 for each of fiscal
 23 years 2010, 2011, 2012, 2013, and 2014.”; and

24 (B) in subsection (d), by striking “sub-
 25 section (a)” and inserting “subsection (a)(1)”.

1 (5) EFFECTIVE DATE.—This subsection and the
2 amendments made by this subsection take effect
3 July 1, 2010.

4 (b) STATE HEALTH INSURANCE ASSISTANCE PRO-
5 GRAMS.—

6 (1) IN GENERAL.—The Secretary shall use
7 amounts made available under paragraph (3) to
8 award grants to States for State health insurance
9 assistance programs receiving assistance under sec-
10 tion 4360 of the Omnibus Budget Reconciliation Act
11 of 1990 to provide advance care planning services to
12 Medicare beneficiaries, personal representatives of
13 such beneficiaries, and the families of such bene-
14 ficiaries. Such services shall include information re-
15 garding State-specific advance directives and ways to
16 discuss individual care wishes with health care pro-
17 viders.

18 (2) REQUIREMENTS.—

19 (A) AWARD OF GRANTS.—In making
20 grants under this subsection for a fiscal year,
21 the Secretary shall satisfy the following require-
22 ments:

23 (i) Two-thirds of the total amount of
24 funds available under paragraph (3) for a
25 fiscal year shall be allocated among those

1 States approved for a grant under this sec-
2 tion that have adopted the Uniform
3 Health-Care Decisions Act drafted by the
4 National Conference of Commissioners on
5 Uniform State Laws and approved and
6 recommended for enactment by all States
7 at the annual conference of such commis-
8 sioners in 1993.

9 (ii) One-third of the total amount of
10 funds available under paragraph (3) for a
11 fiscal year shall be allocated among those
12 States approved for a grant under this sec-
13 tion that have adopted a uniform form for
14 orders regarding life sustaining treatment
15 as defined in section 1861(hhh)(5) of the
16 Social Security Act (as amended by section
17 211 of this Act) or a comparable approach
18 to advance care planning.

19 (B) WORK PLAN; REPORT.—As a condition
20 of being awarded a grant under this subsection,
21 a State shall submit the following to the Sec-
22 retary:

23 (i) An approved plan for expending
24 grant funds.

1 (ii) For each fiscal year for which the
 2 State is paid grant funds under this sub-
 3 section, an annual report regarding the use
 4 of the funds, including the number of
 5 Medicare beneficiaries served and their sat-
 6 isfaction with the services provided.

7 (C) LIMITATION.—No State shall be paid
 8 funds from a grant made under this subsection
 9 prior to July 1, 2010.

10 (3) AUTHORIZATION OF APPROPRIATIONS.—
 11 There is authorized to be appropriated to the Sec-
 12 retary to the Centers for Medicare & Medicaid Serv-
 13 ices Program Management Account, \$12,000,000 for
 14 each of fiscal years 2010 through 2014 for purposes
 15 of awarding grants to States under paragraph (1).

16 (c) MEDICAID TRANSFORMATION GRANTS FOR AD-
 17 VANCE CARE PLANNING.—Section 1903(z) of the Social
 18 Security Act (42 U.S.C. 1396b(z)) is amended—

19 (1) in paragraph (2), by adding at the end the
 20 following new subparagraph:

21 “(G) Methods for improving the effective-
 22 ness and efficiency of medical assistance pro-
 23 vided under this title by making available to in-
 24 dividuals enrolled in the State plan or under a
 25 waiver of such plan information regarding ad-

vance care planning (as defined in section 3 of the Advance Planning and Compassionate Care Act of 2009), including at time of enrollment or renewal of enrollment in the plan or waiver, through providers, and through such other innovative means as the State determines appropriate.”;

(2) in paragraph (3), by adding at the end the following new subparagraph:

“(D) WORK PLAN REQUIRED FOR AWARD OF ADVANCE CARE PLANNING GRANTS.—Payment to a State under this subsection to adopt the innovative methods described in paragraph (2)(G) is conditioned on the State submitting to the Secretary an approved plan for expending the funds awarded to the State under this subsection.”; and

(3) in paragraph (4)—

(A) in subparagraph (A)—

(i) in clause (i), by striking “and” at the end;

(ii) in clause (ii), by striking the period at the end and inserting “; and”; and

(iii) by inserting after clause (ii), the following new clause:

1 “(iii) \$20,000,000 for each of fiscal
2 years 2010 through 2014.”; and

3 (B) by striking subparagraph (B), and in-
4 serting the following:

5 “(B) ALLOCATION OF FUNDS.—The Sec-
6 retary shall specify a method for allocating the
7 funds made available under this subsection
8 among States awarded a grant for fiscal year
9 2010, 2011, 2012, 2013, or 2014. Such method
10 shall provide that—

11 “(i) 100 percent of such funds for
12 each of fiscal years 2010 through 2014
13 shall be awarded to States that design pro-
14 grams to adopt the innovative methods de-
15 scribed in paragraph (2)(G); and

16 “(ii) in no event shall a payment to a
17 State awarded a grant under this sub-
18 section for fiscal year 2010 be made prior
19 to July 1, 2010.”.

20 (d) ADVANCE CARE PLANNING COMMUNITY TRAIN-
21 ING GRANTS.—

22 (1) IN GENERAL.—The Secretary shall use
23 amounts made available under paragraph (3) to
24 award grants to area agencies on aging (as defined

1 in section 102 of the Older Americans Act of 1965
2 (42 U.S.C. 3002)).

3 (2) REQUIREMENTS.—

4 (A) USE OF FUNDS.—Funds awarded to
5 an area agency on aging under this subsection
6 shall be used to provide advance care planning
7 education and training opportunities for local
8 aging service providers and organizations.

9 (B) WORK PLAN; REPORT.—As a condition
10 of being awarded a grant under this subsection,
11 an area agency on aging shall submit the fol-
12 lowing to the Secretary:

13 (i) An approved plan for expending
14 grant funds.

15 (ii) For each fiscal year for which the
16 agency is paid grant funds under this sub-
17 section, an annual report regarding the use
18 of the funds, including the number of
19 Medicare beneficiaries served and their sat-
20 isfaction with the services provided.

21 (C) LIMITATION.—No area agency on
22 aging shall be paid funds from a grant made
23 under this subsection prior to July 1, 2010.

24 (3) AUTHORIZATION OF APPROPRIATIONS.—

25 There is authorized to be appropriated to the Sec-

1 retary to the Centers for Medicare & Medicaid Serv-
 2 ices Program Management Account, \$12,000,000 for
 3 each of fiscal years 2010 through 2014 for purposes
 4 of awarding grants to area agencies on aging under
 5 paragraph (1).

6 (e) NONDUPLICATION OF ACTIVITIES.—The Sec-
 7 retary shall establish procedures to ensure that funds
 8 made available under grants awarded under this section
 9 or pursuant to amendments made by this section supple-
 10 ment, not supplant, existing Federal funding, and that
 11 such funds are not used to duplicate activities carried out
 12 under such grants or under other Federally funded pro-
 13 grams.

14 **SEC. 112. GRANTS FOR PROGRAMS FOR ORDERS REGARD-**
 15 **ING LIFE SUSTAINING TREATMENT.**

16 (a) IN GENERAL.—The Secretary shall make grants
 17 to eligible entities for the purpose of—

18 (1) establishing new programs for orders re-
 19 garding life sustaining treatment in States or local-
 20 ities;

21 (2) expanding or enhancing an existing pro-
 22 gram for orders regarding life sustaining treatment
 23 in States or localities; or

24 (3) providing a clearinghouse of information on
 25 programs for orders for life sustaining treatment

1 and consultative services for the development or en-
2 hancement of such programs.

3 (b) AUTHORIZED ACTIVITIES.—Activities funded
4 through a grant under this section for an area may in-
5 clude—

6 (1) developing such a program for the area that
7 includes home care, hospice, long-term care, commu-
8 nity and assisted living residences, skilled nursing
9 facilities, inpatient rehabilitation facilities, hospitals,
10 and emergency medical services within the area;

11 (2) securing consultative services and advice
12 from institutions with experience in developing and
13 managing such programs; and

14 (3) expanding an existing program for orders
15 regarding life sustaining treatment to serve more pa-
16 tients or enhance the quality of services, including
17 educational services for patients and patients' fami-
18 lies or training of health care professionals.

19 (c) DISTRIBUTION OF FUNDS.—In funding grants
20 under this section, the Secretary shall ensure that, of the
21 funds appropriated to carry out this section for each fiscal
22 year—

23 (1) at least two-thirds are used for establishing
24 or developing new programs for orders regarding life
25 sustaining treatment; and

1 (2) one-third is used for expanding or enhanc-
2 ing existing programs for orders regarding life sus-
3 taining treatment.

4 (d) DEFINITIONS.—In this section:

5 (1) The term “eligible entity” includes—

6 (A) an academic medical center, a medical
7 school, a State health department, a State med-
8 ical association, a multi-State taskforce, a hos-
9 pital, or a health system capable of admin-
10 istering a program for orders regarding life sus-
11 taining treatment for a State or locality; or

12 (B) any other health care agency or entity
13 as the Secretary determines appropriate.

14 (2) The term “order regarding life sustaining
15 treatment” has the meaning given such term in sec-
16 tion 1861(hhh)(5) of the Social Security Act, as
17 added by section 211.

18 (3) The term “program for orders regarding
19 life sustaining treatment” means, with respect to an
20 area, a program that supports the active use of or-
21 ders regarding life sustaining treatment in the area.

22 (e) AUTHORIZATION OF APPROPRIATIONS.—To carry
23 out this section, there are authorized to be appropriated
24 such sums as may be necessary for each of the fiscal years
25 2009 through 2014.

PART II—PROVIDER EDUCATION

**SEC. 121. PUBLIC PROVIDER ADVANCE CARE PLANNING
WEBSITE.**

(a) DEVELOPMENT.—Not later than January 1, 2010, the Secretary, acting through the Administrator of the Centers for Medicare & Medicaid Services and the Director of the Agency for Healthcare Research and Quality, shall establish a website for providers under Medicare, Medicaid, the Children’s Health Insurance Program, the Indian Health Service (include contract providers) and other public health providers on each individual’s right to make decisions concerning medical care, including the right to accept or refuse medical or surgical treatment, and the existence of advance directives.

(b) MAINTENANCE.—The website, shall be maintained and publicized by the Secretary on an ongoing basis.

(c) CONTENT.—The website shall include content, tools, and resources necessary to do the following:

(1) Inform providers about the advance directive requirements under the health care programs described in subsection (a) and other State and Federal laws and regulations related to advance care planning.

(2) Educate providers about advance care planning quality improvement activities.

1 (3) Provide assistance to providers to—

2 (A) integrate advance directives into elec-
3 tronic health records, including oral directives;
4 and

5 (B) develop and disseminate advance care
6 planning informational materials for their pa-
7 tients.

8 (4) Inform providers about advance care plan-
9 ning continuing education requirements and oppor-
10 tunities.

11 (5) Encourage providers to discuss advance
12 care planning with their patients of all ages.

13 (6) Assist providers' understanding of the con-
14 tinuum of end-of-life care services and supports
15 available to patients, including palliative care and
16 hospice.

17 (7) Inform providers of best practices for dis-
18 cussing end-of-life care with dying patients and their
19 loved ones.

20 **SEC. 122. CONTINUING EDUCATION FOR PHYSICIANS AND**
21 **NURSES.**

22 (a) IN GENERAL.—Not later than January 1, 2012,
23 the Secretary, acting through the Director of Health Re-
24 sources and Services Administration, shall develop, in con-
25 sultation with health care providers and State boards of

1 medicine and nursing, a curriculum for continuing edu-
 2 cation that States may adopt for physicians and nurses
 3 on advance care planning and end-of-life care.

4 (b) CONTENT.—

5 (1) IN GENERAL.—The continuing education
 6 curriculum developed under subsection (a) for physi-
 7 cians and nurses shall, at a minimum, include—

8 (A) a description of the meaning and im-
 9 portance of advance care planning;

10 (B) a description of advance directives, in-
 11 cluding living wills and durable powers of attor-
 12 ney, and the use of such directives;

13 (C) palliative care principles and ap-
 14 proaches to care; and

15 (D) the continuum of end-of-life services
 16 and supports, including palliative care and hos-
 17 pice.

18 (2) ADDITIONAL CONTENT FOR PHYSICIANS.—

19 The continuing education curriculum for physicians
 20 developed under subsection (a) shall include instruc-
 21 tion on how to conduct advance care planning with
 22 patients and their loved ones.

1 **Subtitle B—Portability of Advance**
 2 **Directives; Health Information**
 3 **Technology**

4 **SEC. 131. PORTABILITY OF ADVANCE DIRECTIVES.**

5 (a) MEDICARE.—Section 1866(f) of the Social Secu-
 6 rity Act (42 U.S.C. 1395cc(f)) is amended—

7 (1) in paragraph (1)—

8 (A) in subparagraph (B), by inserting
 9 “and if presented by the individual, to include
 10 the content of such advance directive in a
 11 prominent part of such record” before the semi-
 12 colon at the end;

13 (B) in subparagraph (D), by striking
 14 “and” after the semicolon at the end;

15 (C) in subparagraph (E), by striking the
 16 period at the end and inserting “; and”; and

17 (D) by inserting after subparagraph (E)
 18 the following new subparagraph:

19 “(F) to provide each individual with the oppor-
 20 tunity to discuss issues relating to the information
 21 provided to that individual pursuant to subpara-
 22 graph (A) with an appropriately trained profes-
 23 sional.”;

24 (2) in paragraph (3), by striking “a written”
 25 and inserting “an”; and

1 (3) by adding at the end the following new
2 paragraph:

3 “(5)(A) An advance directive validly executed outside
4 of the State in which such advance directive is presented
5 by an adult individual to a provider of services, a Medicare
6 Advantage organization, or a prepaid or eligible organiza-
7 tion shall be given the same effect by that provider or or-
8 ganization as an advance directive validly executed under
9 the law of the State in which it is presented would be given
10 effect.

11 “(B)(i) The definition of an advanced directive shall
12 also include actual knowledge of instructions made while
13 an individual was able to express the wishes of such indi-
14 vidual with regard to health care.

15 “(ii) For purposes of clause (i), the term ‘actual
16 knowledge’ means the possession of information of an indi-
17 vidual’s wishes communicated to the health care provider
18 orally or in writing by the individual, the individual’s med-
19 ical power of attorney representative, the individual’s
20 health care surrogate, or other individuals resulting in the
21 health care provider’s personal cognizance of these wishes.
22 Other forms of imputed knowledge are not actual knowl-
23 edge.

24 “(C) The provisions of this paragraph shall preempt
25 any State law to the extent such law is inconsistent with

1 such provisions. The provisions of this paragraph shall not
 2 preempt any State law that provides for greater port-
 3 ability, more deference to a patient’s wishes, or more lati-
 4 tude in determining a patient’s wishes.”.

5 (b) MEDICAID.—Section 1902(w) of the Social Secu-
 6 rity Act (42 U.S.C. 1396a(w)) is amended—

7 (1) in paragraph (1)—

8 (A) in subparagraph (B)—

9 (i) by striking “in the individual’s
 10 medical record” and inserting “in a promi-
 11 nent part of the individual’s current med-
 12 ical record”; and

13 (ii) by inserting “and if presented by
 14 the individual, to include the content of
 15 such advance directive in a prominent part
 16 of such record” before the semicolon at the
 17 end;

18 (B) in subparagraph (D), by striking
 19 “and” after the semicolon at the end;

20 (C) in subparagraph (E), by striking the
 21 period at the end and inserting “; and”; and

22 (D) by inserting after subparagraph (E)
 23 the following new subparagraph:

24 “(F) to provide each individual with the oppor-
 25 tunity to discuss issues relating to the information

1 provided to that individual pursuant to subpara-
2 graph (A) with an appropriately trained profes-
3 sional.”;

4 (2) in paragraph (4), by striking “a written”
5 and inserting “an”; and

6 (3) by adding at the end the following para-
7 graph:

8 “(6)(A) An advance directive validly executed outside
9 of the State in which such advance directive is presented
10 by an adult individual to a provider or organization shall
11 be given the same effect by that provider or organization
12 as an advance directive validly executed under the law of
13 the State in which it is presented would be given effect.

14 “(B)(i) The definition of an advance directive shall
15 also include actual knowledge of instructions made while
16 an individual was able to express the wishes of such indi-
17 vidual with regard to health care.

18 “(ii) For purposes of clause (i), the term ‘actual
19 knowledge’ means the possession of information of an indi-
20 vidual’s wishes communicated to the health care provider
21 orally or in writing by the individual, the individual’s med-
22 ical power of attorney representative, the individual’s
23 health care surrogate, or other individuals resulting in the
24 health care provider’s personal cognizance of these wishes.

1 Other forms of imputed knowledge are not actual knowl-
 2 edge.

3 “(C) The provisions of this paragraph shall preempt
 4 any State law to the extent such law is inconsistent with
 5 such provisions. The provisions of this paragraph shall not
 6 preempt any State law that provides for greater port-
 7 ability, more deference to a patient’s wishes, or more lati-
 8 tude in determining a patient’s wishes.”.

9 (c) CHIP.—Section 2107(e)(1) of the Social Security
 10 Act (42 U.S.C. 1397gg(e)(1)) is amended—

11 (1) by redesignating subparagraphs (E)
 12 through (L) as subparagraphs (D) through (M), re-
 13 spectively; and

14 (2) by inserting after subparagraph (D) the fol-
 15 lowing:

16 “(E) Section 1902(w) (relating to advance
 17 directives).”.

18 (d) STUDY AND REPORT REGARDING IMPLEMENTA-
 19 TION.—

20 (1) STUDY.—The Secretary shall conduct a
 21 study regarding the implementation of the amend-
 22 ments made by subsections (a) and (b).

23 (2) REPORT.—Not later than 18 months after
 24 the date of enactment of this Act, the Secretary
 25 shall submit to Congress a report on the study con-

ducted under paragraph (1), together with recommendations for such legislation and administrative actions as the Secretary considers appropriate.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Subject to paragraph (2), the amendments made by subsections (a), (b), and (c) shall apply to provider agreements and contracts entered into, renewed, or extended under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.), and to State plans under title XIX of such Act (42 U.S.C. 1396 et seq.) and State child health plans under title XXI of such Act (42 U.S.C. 1397aa et seq.), on or after such date as the Secretary specifies, but in no case may such date be later than 1 year after the date of enactment of this Act.

(2) EXTENSION OF EFFECTIVE DATE FOR STATE LAW AMENDMENT.—In the case of a State plan under title XIX of the Social Security Act or a State child health plan under title XXI of such Act which the Secretary determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by subsections (b) and (c), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its

1 failure to meet these additional requirements before
 2 the first day of the first calendar quarter beginning
 3 after the close of the first regular session of the
 4 State legislature that begins after the date of enact-
 5 ment of this Act. For purposes of the previous sen-
 6 tence, in the case of a State that has a 2-year legis-
 7 lative session, each year of the session is considered
 8 to be a separate regular session of the State legisla-
 9 ture.

10 **SEC. 132. STATE ADVANCE DIRECTIVE REGISTRIES; DRIV-**
 11 **ER'S LICENSE ADVANCE DIRECTIVE NOTA-**
 12 **TION.**

13 Part P of title III of the Public Health Service Act
 14 (42 U.S.C. 280g) is amended—

15 (1) by redesignating section 399R (as inserted
 16 by section 2 of Public Law 110–373) as section
 17 399S;

18 (2) by redesignating section 399R (as inserted
 19 by section 3 of Public Law 110–374) as section
 20 399T; and

21 (3) by adding at the end the following:

22 **“SEC. 399U. STATE ADVANCE DIRECTIVE REGISTRIES.**

23 **“(a) STATE ADVANCE DIRECTIVE REGISTRY.—In**
 24 **this section, the term ‘State advance directive registry’**
 25 **means a secure, electronic database that—**

1 “(1) is available free of charge to residents of
2 a State; and

3 “(2) stores advance directive documents and
4 makes such documents accessible to medical service
5 providers in accordance with Federal and State pri-
6 vacy laws.

7 “(b) GRANT PROGRAM.—Beginning on July 1, 2010,
8 the Secretary, acting through the Director of the Centers
9 for Disease Control and Prevention, shall award grants
10 on a competitive basis to eligible entities to establish and
11 operate, directly or indirectly (by competitive grant or
12 competitive contract), State advance directive registries.

13 “(c) ELIGIBLE ENTITIES.—

14 “(1) IN GENERAL.—To be eligible to receive a
15 grant under this section, an entity shall—

16 “(A) be a State department of health; and

17 “(B) submit to the Director an application
18 at such time, in such manner, and containing—

19 “(i) a plan for the establishment and
20 operation of a State advance directive reg-
21 istry; and

22 “(ii) such other information as the Di-
23 rector may require.

24 “(2) NO REQUIREMENT OF NOTATION MECHA-
25 NISM.—The Secretary shall not require that an enti-

1 ty establish and operate a driver’s license advance
 2 directive notation mechanism for State residents
 3 under section 399V to be eligible to receive a grant
 4 under this section.

5 “(d) ANNUAL REPORT.—For each year for which an
 6 entity receives an award under this section, such entity
 7 shall submit an annual report to the Director on the use
 8 of the funds received pursuant to such award, including
 9 the number of State residents served through the registry.

10 “(e) AUTHORIZATION.—There is authorized to be ap-
 11 propriated to carry out this section \$20,000,000 for fiscal
 12 year 2010 and each fiscal year thereafter.

13 **“SEC. 399V. DRIVER’S LICENSE ADVANCE DIRECTIVE NOTA-**
 14 **TION.**

15 “(a) IN GENERAL.—Beginning July 1, 2010, the Sec-
 16 retary, acting through the Director of the Centers for Dis-
 17 ease Control and Prevention, shall award grants on a com-
 18 petitive basis to States to establish and operate a mecha-
 19 nism for a State resident with a driver’s license to include
 20 a notice of the existence of an advance directive for such
 21 resident on such license.

22 “(b) ELIGIBILITY.—To be eligible to receive a grant
 23 under this section, a State shall—

24 “(1) establish and operate a State advance di-
 25 rective registry under section 399U; and

1 “(2) submit to the Director an application at
2 such time, in such manner, and containing—

3 “(A) a plan that includes a description of
4 how the State will—

5 “(i) disseminate information about ad-
6 vance directives at the time of driver’s li-
7 cense application or renewal;

8 “(ii) enable each State resident with a
9 driver’s license to include a notice of the
10 existence of an advance directive for such
11 resident on such license in a manner con-
12 sistent with the notice on such a license in-
13 dicating a driver’s intent to be an organ
14 donor; and

15 “(iii) coordinate with the State de-
16 partment of health to ensure that, if a
17 State resident has an advance directive no-
18 tice on his or her driver’s license, the exist-
19 ence of such advance directive is included
20 in the State registry established under sec-
21 tion 399U; and

22 “(B) any other information as the Director
23 may require.

24 “(c) ANNUAL REPORT.—For each year for which a
25 State receives an award under this section, such State

1 shall submit an annual report to the Director on the use
2 of the funds received pursuant to such award, including
3 the number of State residents served through the mecha-
4 nism.

5 “(d) AUTHORIZATION.—There is authorized to be ap-
6 propriated to carry out this section \$50,000,000 for fiscal
7 year 2010 and each fiscal year thereafter.”.

8 **SEC. 133. GAO STUDY AND REPORT ON ESTABLISHMENT OF**
9 **NATIONAL ADVANCE DIRECTIVE REGISTRY.**

10 (a) STUDY.—The Comptroller General of the United
11 States shall conduct a study on the feasibility of a national
12 registry for advance directives, taking into consideration
13 the constraints created by the privacy provisions enacted
14 as a result of the Health Insurance Portability and Ac-
15 countability Act of 1996 (Public Law 104–191).

16 (b) REPORT.—Not later than 18 months after the
17 date of enactment of this Act, the Comptroller General
18 of the United States shall submit to Congress a report
19 on the study conducted under subsection (a) together with
20 recommendations for such legislation and administrative
21 action as the Comptroller General of the United States
22 determines to be appropriate.

1 **Subtitle C—National Uniform**
 2 **Policy on Advance Care Planning**

3 **SEC. 141. STUDY AND REPORT BY THE SECRETARY RE-**
 4 **GARDING THE ESTABLISHMENT AND IMPLE-**
 5 **MENTATION OF A NATIONAL UNIFORM POL-**
 6 **ICY ON ADVANCE DIRECTIVES.**

7 (a) STUDY.—

8 (1) IN GENERAL.—The Secretary, acting
 9 through the Office of the Assistant Secretary for
 10 Planning and Evaluation, shall conduct a thorough
 11 study of all matters relating to the establishment
 12 and implementation of a national uniform policy on
 13 advance directives for individuals receiving items and
 14 services under titles XVIII, XIX, or XXI of the So-
 15 cial Security Act (42 U.S.C. 1395 et seq.; 1396 et
 16 seq.; 1397aa et seq.).

17 (2) MATTERS STUDIED.—The matters studied
 18 by the Secretary under paragraph (1) shall include
 19 issues concerning—

20 (A) family satisfaction that a patient's
 21 wishes, as stated in the patient's advance direc-
 22 tive, were carried out;

23 (B) the portability of advance directives,
 24 including cases involving the transfer of an in-
 25 dividual from 1 health care setting to another;

1 (C) immunity from civil liability and crimi-
 2 nal responsibility for health care providers that
 3 follow the instructions in an individual's ad-
 4 vance directive that was validly executed in, and
 5 consistent with the laws of, the State in which
 6 it was executed;

7 (D) conditions under which an advance di-
 8 rective is operative;

9 (E) revocation of an advance directive by
 10 an individual;

11 (F) the criteria used by States for deter-
 12 mining that an individual has a terminal condi-
 13 tion;

14 (G) surrogate decisionmaking regarding
 15 end-of-life care;

16 (H) the provision of adequate palliative
 17 care (as defined in paragraph (3)), including
 18 pain management;

19 (I) adequate and timely referrals to hos-
 20 pice care programs; and

21 (J) the end-of-life care needs of children
 22 and their families.

23 (3) PALLIATIVE CARE.—For purposes of para-
 24 graph (2)(H), the term “palliative care” means
 25 interdisciplinary care for individuals with a life-

1 threatening illness or injury relating to pain and
 2 symptom management and psychological, social, and
 3 spiritual needs and that seeks to improve the quality
 4 of life for the individual and the individual's family.

5 (b) REPORT TO CONGRESS.—Not later than 18
 6 months after the date of enactment of this Act, the Sec-
 7 retary shall submit to Congress a report on the study con-
 8 ducted under subsection (a), together with recommenda-
 9 tions for such legislation and administrative actions as the
 10 Secretary considers appropriate.

11 (c) CONSULTATION.—In conducting the study and
 12 developing the report under this section, the Secretary
 13 shall consult with the Uniform Law Commissioners, and
 14 other interested parties.

15 **TITLE II—COMPASSIONATE** 16 **CARE**

17 **Subtitle A—Workforce** 18 **Development**

19 **PART I—EDUCATION AND TRAINING**

20 **SEC. 201. NATIONAL GERIATRIC AND PALLIATIVE CARE** 21 **SERVICES CORPS.**

22 Section 331 of the Public Health Service Act (42
 23 U.S.C. 254d) is amended—

24 (1) by redesignating subsection (j) as sub-
 25 section (k); and

1 (2) by inserting after subsection (i), the fol-
 2 lowing:

3 “(j) NATIONAL GERIATRIC AND PALLIATIVE CARE
 4 SERVICES CORPS.—

5 “(1) ESTABLISHMENT.—Not later than Janu-
 6 ary 1, 2012, the Secretary shall establish within the
 7 National Health Service Corps a National Geriatric
 8 and Palliative Care Services Corps (referred to in
 9 this subsection as the ‘Corps’) which shall consist
 10 of—

11 “(A) such officers of the Regular and Re-
 12 serve Corps of the Service as the Secretary may
 13 designate;

14 “(B) such civilian employees of the United
 15 States as the Secretary may appoint; and

16 “(C) such other individuals who are not
 17 employees of the United States.

18 “(2) DUTIES.—The Corps shall be utilized by
 19 the Secretary to provide geriatric and palliative care
 20 services within health professional shortage areas.

21 “(3) APPLICATION OF PROVISIONS.—The loan-
 22 forgiveness, scholarship, and direct financial incen-
 23 tives programs provided for under this section shall
 24 apply to physicians, nurses, and other health profes-
 25 sionals (as identified by the Secretary) with respect

1 to the training necessary to enable such individuals
 2 to become geriatric or palliative care specialists and
 3 provide geriatric and palliative care services in
 4 health professional shortage areas.

5 “(4) REPORT.—Not later than 6 months prior
 6 to the date on which the Secretary establishes the
 7 Corps under paragraph (1), the Secretary shall sub-
 8 mit to Congress a report concerning the organization
 9 of the Corps, the application process for membership
 10 in the Corps, and the funding necessary for the
 11 Corps (targeted by profession and by specializa-
 12 tion).”.

13 **SEC. 202. EXEMPTION OF PALLIATIVE MEDICINE FELLOW-**
 14 **SHIP TRAINING FROM MEDICARE GRADUATE**
 15 **MEDICAL EDUCATION CAPS.**

16 (a) DIRECT GRADUATE MEDICAL EDUCATION.—Sec-
 17 tion 1886(h)(4)(F) of the Social Security Act (42 U.S.C.
 18 1395ww(h)(4)(F)) is amended—

19 (1) in clause (i), by inserting “clause (iii) and”
 20 after “subject to”; and

21 (2) by adding at the end the following new
 22 clause:

23 “(iii) INCREASE ALLOWED FOR PAL-
 24 LIATIVE MEDICINE FELLOWSHIP TRAIN-
 25 ING.—For cost reporting periods beginning

1 on or after January 1, 2011, in applying
 2 clause (i), there shall not be taken into ac-
 3 count full-time equivalent residents in the
 4 field of allopathic or osteopathic medicine
 5 who are in palliative medicine fellowship
 6 training that is approved by the Accredita-
 7 tion Council for Graduate Medical Edu-
 8 cation.”.

9 (b) INDIRECT MEDICAL EDUCATION.—Section
 10 1886(d)(5)(B) of the Social Security Act (42 U.S.C.
 11 1395ww(d)(5)(B)) is amended by adding at the end the
 12 following new clause:

13 “(x) Clause (iii) of subsection (h)(4)(F) shall
 14 apply to clause (v) in the same manner and for the
 15 same period as such clause (iii) applies to clause (i)
 16 of such subsection.”.

17 **SEC. 203. MEDICAL SCHOOL CURRICULA.**

18 (a) IN GENERAL.—The Secretary, in consultation
 19 with the Association of American Medical Colleges, shall
 20 establish guidelines for the imposition by medical schools
 21 of a minimum amount of end-of-life training as a require-
 22 ment for obtaining a Doctor of Medicine degree in the field
 23 of allopathic or osteopathic medicine.

24 (b) TRAINING.—Under the guidelines established
 25 under subsection (a), minimum training shall include—

1 (1) training in how to discuss and help patients
2 and their loved ones with advance care planning;

3 (2) with respect to students and trainees who
4 will work with children, specialized pediatric train-
5 ing;

6 (3) training in the continuum of end-of-life
7 services and supports, including palliative care and
8 hospice;

9 (4) training in how to discuss end-of-life care
10 with dying patients and their loved ones; and

11 (5) medical and legal issues training.

12 (c) DISTRIBUTION.—Not later than January 1, 2011,
13 the Secretary shall disseminate the guidelines established
14 under subsection (a) to medical schools.

15 (d) COMPLIANCE.—Effective beginning not later than
16 July 1, 2012, a medical school that is receiving Federal
17 assistance shall be required to implement the guidelines
18 established under subsection (a). A medical school that the
19 Secretary determines is not implementing such guidelines
20 shall not be eligible for Federal assistance.

**Subtitle B—Coverage Under
Medicare, Medicaid, and CHIP**

PART I—COVERAGE OF ADVANCE CARE

PLANNING

SEC. 211. MEDICARE, MEDICAID, AND CHIP COVERAGE.

(a) MEDICARE.—

(1) IN GENERAL.—Section 1861 of the Social Security Act (42 U.S.C. 1395x) is amended—

(A) in subsection (s)(2)—

(i) by striking “and” at the end of subparagraph (DD);

(ii) by adding “and” at the end of subparagraph (EE); and

(iii) by adding at the end the following new subparagraph:

“(FF) advance care planning consultation (as defined in subsection (hhh)(1));”; and

(B) by adding at the end the following new subsection:

“Advance Care Planning Consultation

“(hhh)(1) Subject to paragraphs (3) and (4), the term ‘advance care planning consultation’ means a consultation between the individual and a practitioner described in paragraph (2) regarding advance care planning, if, subject to subparagraphs (A) and (B) of paragraph (3),

1 the individual involved has not had such a consultation
2 within the last 5 years. Such consultation shall include the
3 following:

4 “(A) An explanation by the practitioner of ad-
5 vance care planning, including key questions and
6 considerations, important steps, and suggested peo-
7 ple to talk to.

8 “(B) An explanation by the practitioner of ad-
9 vance directives, including living wills and durable
10 powers of attorney, and their uses.

11 “(C) An explanation by the practitioner of the
12 role and responsibilities of a health care proxy.

13 “(D) The provision by the practitioner of a list
14 of national and State-specific resources to assist con-
15 sumers and their families with advance care plan-
16 ning, including the national toll-free hotline, the ad-
17 vance care planning clearinghouses, and State legal
18 service organizations (including those funded
19 through the Older Americans Act).

20 “(E) An explanation by the practitioner of the
21 continuum of end-of-life services and supports avail-
22 able, including palliative care and hospice, and bene-
23 fits for such services and supports that are available
24 under this title.

1 “(F)(i) Subject to clause (ii), an explanation of
2 orders regarding life sustaining treatment or similar
3 orders, which shall include—

4 “(I) the reasons why the development of
5 such an order is beneficial to the individual and
6 the individual’s family and the reasons why
7 such an order should be updated periodically as
8 the health of the individual changes;

9 “(II) the information needed for an indi-
10 vidual or legal surrogate to make informed deci-
11 sions regarding the completion of such an
12 order; and

13 “(III) the identification of resources that
14 an individual may use to determine the require-
15 ments of the State in which such individual re-
16 sides so that the treatment wishes of that indi-
17 vidual will be carried out if the individual is un-
18 able to communicate those wishes, including re-
19 quirements regarding the designation of a sur-
20rogate decisionmaker (also known as a health
21 care proxy).

22 “(ii) The Secretary may limit the requirement
23 for explanations under clause (i) to consultations
24 furnished in States, localities, or other geographic

1 areas in which orders described in such clause have
2 been widely adopted.

3 “(2) A practitioner described in this paragraph is—

4 “(A) a physician (as defined in subsection
5 (r)(1)); and

6 “(B) a nurse practitioner or physician’s assist-
7 ant who has the authority under State law to sign
8 orders for life sustaining treatments.

9 “(3)(A) An initial preventive physical examination
10 under subsection (ww), including any related discussion
11 during such examination, shall not be considered an ad-
12 vance care planning consultation for purposes of applying
13 the 5-year limitation under paragraph (1).

14 “(B) An advance care planning consultation with re-
15 spect to an individual shall be conducted more frequently
16 than provided under paragraph (1) if there is a significant
17 change in the health condition of the individual, including
18 diagnosis of a chronic, progressive, life-limiting disease, a
19 life-threatening or terminal diagnosis or life-threatening
20 injury, or upon admission to a skilled nursing facility, a
21 long-term care facility (as defined by the Secretary), or
22 a hospice program.

23 “(4) A consultation under this subsection may in-
24 clude the formulation of an order regarding life sustaining
25 treatment or a similar order.

1 “(5)(A) For purposes of this section, the term ‘order
2 regarding life sustaining treatment’ means, with respect
3 to an individual, an actionable medical order relating to
4 the treatment of that individual that—

5 “(i) is signed and dated by a physician (as de-
6 fined in subsection (r)(1)) or another health care
7 professional (as specified by the Secretary and who
8 is acting within the scope of the professional’s au-
9 thority under State law in signing such an order)
10 and is in a form that permits it to stay with the pa-
11 tient and be followed by health care professionals
12 and providers across the continuum of care, includ-
13 ing home care, hospice, long-term care, community
14 and assisted living residences, skilled nursing facili-
15 ties, inpatient rehabilitation facilities, hospitals, and
16 emergency medical services;

17 “(ii) effectively communicates the individual’s
18 preferences regarding life sustaining treatment, in-
19 cluding an indication of the treatment and care de-
20 sired by the individual;

21 “(iii) is uniquely identifiable and standardized
22 within a given locality, region, or State (as identified
23 by the Secretary);

24 “(iv) is portable across care settings; and

1 “(v) may incorporate any advance directive (as
2 defined in section 1866(f)(3)) if executed by the in-
3 dividual.

4 “(B) The level of treatment indicated under subpara-
5 graph (A)(ii) may range from an indication for full treat-
6 ment to an indication to limit some or all or specified
7 interventions. Such indicated levels of treatment may in-
8 clude indications respecting, among other items—

9 “(i) the intensity of medical intervention if the
10 patient is pulseless, apneic, or has serious cardiac or
11 pulmonary problems;

12 “(ii) the individual’s desire regarding transfer
13 to a hospital or remaining at the current care set-
14 ting;

15 “(iii) the use of antibiotics; and

16 “(iv) the use of artificially administered nutri-
17 tion and hydration.”.

18 (2) PAYMENT.—Section 1848(j)(3) of the So-
19 cial Security Act (42 U.S.C. 1395w–4(j)(3)) is
20 amended by inserting “(2)(FF),” after “(2)(EE),”.

21 (3) FREQUENCY LIMITATION.—Section 1862(a)
22 of the Social Security Act (42 U.S.C. 1395y(a)(1))
23 is amended—

24 (A) in paragraph (1)—

1 (i) in subparagraph (N), by striking
2 “and” at the end;

3 (ii) in subparagraph (O) by striking
4 the semicolon at the end and inserting “,
5 and”; and

6 (iii) by adding at the end the fol-
7 lowing new subparagraph:

8 “(P) in the case of advance care planning con-
9 sultations (as defined in section 1861(hhh)(1)),
10 which are performed more frequently than is covered
11 under such section;”; and

12 (B) in paragraph (7), by striking “or (K)”
13 and inserting “(K), or (P)”.

14 (4) EFFECTIVE DATE.—The amendments made
15 by this subsection shall apply to consultations fur-
16 nished on or after January 1, 2011.

17 (b) MEDICAID.—

18 (1) MANDATORY BENEFIT.—Section
19 1902(a)(10)(A) of the Social Security Act (42
20 U.S.C. 1396a(a)(10)(A)) is amended in the matter
21 preceding clause (i) by striking “and (21)” and in-
22 serting “, (21), and (28)”.

23 (2) MEDICAL ASSISTANCE.—Section 1905 of
24 such Act (42 U.S.C. 1396d) is amended—

25 (A) in subsection (a)—

1 (i) in paragraph (27), by striking
2 “and” at the end;

3 (ii) by redesignating paragraph (28)
4 as paragraph (29); and

5 (iii) by inserting after paragraph (27)
6 the following new paragraph:

7 “(28) advance care planning consultations (as
8 defined in subsection (y));”; and

9 (B) by adding at the end the following:

10 “(y)(1) For purposes of subsection (a)(28), the term
11 ‘advance care planning consultation’ means a consultation
12 between the individual and a practitioner described in
13 paragraph (2) regarding advance care planning, if, subject
14 to paragraph (3), the individual involved has not had such
15 a consultation within the last 5 years. Such consultation
16 shall include the following:

17 “(A) An explanation by the practitioner of ad-
18 vance care planning, including key questions and
19 considerations, important steps, and suggested peo-
20 ple to talk to.

21 “(B) An explanation by the practitioner of ad-
22 vance directives, including living wills and durable
23 powers of attorney, and their uses.

24 “(C) An explanation by the practitioner of the
25 role and responsibilities of a health care proxy.

1 “(D) The provision by the practitioner of a list
2 of national and State-specific resources to assist con-
3 sumers and their families with advance care plan-
4 ning, including the national toll-free hotline, the ad-
5 vance care planning clearinghouses, and State legal
6 service organizations (including those funded
7 through the Older Americans Act).

8 “(E) An explanation by the practitioner of the
9 continuum of end-of-life services and supports avail-
10 able, including palliative care and hospice, and bene-
11 fits for such services and supports that are available
12 under this title.

13 “(F)(i) Subject to clause (ii), an explanation of
14 orders for life sustaining treatments or similar or-
15 ders, which shall include—

16 “(I) the reasons why the development of
17 such an order is beneficial to the individual and
18 the individual’s family and the reasons why
19 such an order should be updated periodically as
20 the health of the individual changes;

21 “(II) the information needed for an indi-
22 vidual or legal surrogate to make informed deci-
23 sions regarding the completion of such an
24 order; and

1 “(III) the identification of resources that
2 an individual may use to determine the require-
3 ments of the State in which such individual re-
4 sides so that the treatment wishes of that indi-
5 vidual will be carried out if the individual is un-
6 able to communicate those wishes, including re-
7 quirements regarding the designation of a sur-
8 rogate decisionmaker (also known as a health
9 care proxy).

10 “(ii) The Secretary may limit the requirement
11 for explanations under clause (i) to consultations
12 furnished in States, localities, or other geographic
13 areas in which orders described in such clause have
14 been widely adopted.

15 “(2) A practitioner described in this paragraph is—

16 “(A) a physician (as defined in section
17 1861(r)(1)); and

18 “(B) a nurse practitioner or physician’s assist-
19 ant who has the authority under State law to sign
20 orders for life sustaining treatments.

21 “(3) An advance care planning consultation with re-
22 spect to an individual shall be conducted more frequently
23 than provided under paragraph (1) if there is a significant
24 change in the health condition of the individual including
25 diagnosis of a chronic, progressive, life-limiting disease, a

1 life-threatening or terminal diagnosis or life-threatening
 2 injury, or upon admission to a nursing facility, a long-
 3 term care facility (as defined by the Secretary), or a hos-
 4 pice program.

5 “(4) A consultation under this subsection may in-
 6 clude the formulation of an order regarding life sustaining
 7 treatment or a similar order.

8 “(5) For purposes of this subsection, the term ‘orders
 9 regarding life sustaining treatment’ has the meaning given
 10 that term in section 1861(hhh)(5).”.

11 (c) CHIP.—

12 (1) CHILD HEALTH ASSISTANCE.—Section
 13 2110(a) of the Social Security Act (42 U.S.C.
 14 1397jj) is amended—

15 (A) by redesignating paragraph (28) as
 16 paragraph (29); and

17 (B) by inserting after paragraph (27), the
 18 following:

19 “(28) Advance care planning consultations (as
 20 defined in section 1905(y)).”.

21 (2) MANDATORY COVERAGE.—

22 (A) IN GENERAL.—Section 2103 of such
 23 Act (42 U.S.C. 1397cc), is amended—

1 (i) in subsection (a), in the matter
 2 preceding paragraph (1), by striking “and
 3 (7)” and inserting “(7), and (9)”; and

4 (ii) in subsection (c), by adding at the
 5 end the following:

6 “(9) END-OF-LIFE CARE.—The child health as-
 7 sistance provided to a targeted low-income child
 8 shall include coverage of advance care planning con-
 9 sultations (as defined in section 1905(y) and at the
 10 same payment rate as the rate that would apply to
 11 such a consultation under the State plan under title
 12 XIX).”.

13 (B) CONFORMING AMENDMENT.—Section
 14 2102(a)(7)(B) of such Act (42 U.S.C.
 15 1397bb(a)(7)(B)) is amended by striking “sec-
 16 tion 2103(c)(5)” and inserting “paragraphs (5)
 17 and (9) of section 2103(c)”.

18 (d) DEFINITION OF ADVANCE DIRECTIVE UNDER
 19 MEDICARE, MEDICAID, AND CHIP.—

20 (1) MEDICARE.—Section 1866(f)(3) of the So-
 21 cial Security Act (42 U.S.C. 1395cc(f)(3)) is amend-
 22 ed by striking “means” and all that follows through
 23 the period and inserting “means a living will, med-
 24 ical directive, health care power of attorney, durable
 25 power of attorney, or other written statement by a

1 competent individual that is recognized under State
2 law and indicates the individual’s wishes regarding
3 medical treatment in the event of future incom-
4 petence. Such term includes an advance health care
5 directive and a health care directive recognized
6 under State law.”.

7 (2) MEDICAID AND CHIP.—Section 1902(w)(4)
8 of such Act (42 U.S.C. 1396a(w)(4)) is amended by
9 striking “means” and all that follows through the
10 period and inserting “means a living will, medical di-
11 rective, health care power of attorney, durable power
12 of attorney, or other written statement by a com-
13 petent individual that is recognized under State law
14 and indicates the individual’s wishes regarding med-
15 ical treatment in the event of future incompetence.
16 Such term includes an advance health care directive
17 and a health care directive recognized under State
18 law.”.

19 (e) EFFECTIVE DATE.—The amendments made by
20 this section take effect January 1, 2010.

PART II—HOSPICE**SEC. 221. ADOPTION OF MEDPAC HOSPICE PAYMENT METH-
ODOLOGY RECOMMENDATIONS.**

Section 1814(i) of the Social Security Act (42 U.S.C. 1395f(i)) is amended by adding at the end the following new paragraph:

“(6)(A) The Secretary shall conduct an evaluation of the recommendations of the Medicare Payment Commission for reforming the hospice care benefit under this title that are contained in chapter 6 of the Commission’s report entitled ‘Report to Congress: Medicare Payment Policy (March 2009)’, including the impact that such recommendations if implemented would have on access to care and the quality of care. In conducting such evaluation, the Secretary shall take into account data collected in accordance with section 263(b) of the Advance Planning and Compassionate Care Act of 2009.

“(B) Based on the results of the examination conducted under subparagraph (A), the Secretary shall make appropriate refinements to the recommendations described in subparagraph (A). Such refinements shall take into account—

“(i) the impact on patient populations with longer than average lengths of stay;

1 “(ii) the impact on populations with short-
2 er that average lengths of stay; and

3 “(iii) the utilization patterns of hospice
4 providers in underserved areas, including rural
5 hospices.

6 “(C) Not later than January 1, 2013, the Sec-
7 retary shall submit to Congress a report that con-
8 tains a detailed description of—

9 “(i) the refinements determined appro-
10 priate by the Secretary under subparagraph
11 (B);

12 “(ii) the revisions that the Secretary will
13 implement through regulation under this title
14 pursuant to subparagraph (D); and

15 “(iii) the revisions that the Secretary de-
16 termines require additional legislative action by
17 Congress.

18 “(D)(i) The Secretary shall implement the rec-
19 ommendations described in subparagraph (A), as re-
20 fined under subparagraph (B).

21 “(ii) Subject to clause (iii), the implementation
22 of such recommendations shall apply to hospice care
23 furnished on or after January 1, 2014.

1 “(iii) The Secretary shall establish an appro-
 2 priate transition to the implementation of such rec-
 3 ommendations.

4 “(E) For purposes of carrying out the provi-
 5 sions of this paragraph, the Secretary shall provide
 6 for the transfer, from the Federal Hospital Insur-
 7 ance Trust Fund under section 1817, of such sums
 8 as may be necessary to the Centers for Medicare &
 9 Medicaid Services Program Management Account.”.

10 **SEC. 222. REMOVING HOSPICE INPATIENT DAYS IN SET-**
 11 **TING PER DIEM RATES FOR CRITICAL AC-**
 12 **CESS HOSPITALS.**

13 Section 1814(l) of the Social Security Act (42 U.S.C.
 14 1395f(l)), as amended by section 4102(b)(2) of the
 15 HITECH Act (Public Law 111–5), is amended by adding
 16 at the end the following new paragraph:

17 “(6) For cost reporting periods beginning on or
 18 after January 1, 2011, the Secretary shall remove
 19 Medicare-certified hospice inpatient days from the
 20 calculation of per diem rates for inpatient critical ac-
 21 cess hospital services.”.

1 **SEC. 223. HOSPICE PAYMENTS FOR DUAL ELIGIBLE INDIVIDUALS RESIDING IN LONG-TERM CARE FACILITIES.**
 2
 3

4 (a) IN GENERAL.—Section 1888 of the Social Security Act (42 U.S.C. 1395yy) is amended by adding at the
 5
 6 end the following new subsection:

7 “(f) PAYMENTS FOR DUAL ELIGIBLE INDIVIDUALS
 8 RESIDING IN LONG-TERM CARE FACILITIES.—For cost
 9 reporting periods beginning on or after January 1, 2011,
 10 the Secretary, acting through the Administrator of the
 11 Centers for Medicare & Medicaid Services, shall establish
 12 procedures under which payments for room and board
 13 under the State Medicaid plan with respect to an applicable individual are made directly to the long-term care facility (as defined by the Secretary for purposes of title XIX)
 14 the individual is a resident of. For purposes of the preceding sentence, the term ‘applicable individual’ means an
 15 individual who is entitled to or enrolled for benefits under
 16 part A or enrolled for benefits under part B and is eligible
 17 for medical assistance for hospice care under a State plan
 18 under title XIX.”.

22 (b) STATE PLAN REQUIREMENT.—

23 (1) IN GENERAL.—Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)) is amended—
 24
 25

1 (A) in paragraph (72), by striking “and”
 2 at the end;

3 (B) in paragraph (73), by striking the pe-
 4 riod at the end and inserting “; and”; and

5 (C) by inserting after paragraph (73) the
 6 following new paragraph:

7 “(74) provide that the State will make pay-
 8 ments for room and board with respect to applicable
 9 individuals in accordance with section 1888(f).”.

10 (2) EFFECTIVE DATE.—

11 (A) IN GENERAL.—Except as provided in
 12 subparagraph (B), the amendments made by
 13 paragraph (1) take effect on January 1, 2011.

14 (B) EXTENSION OF EFFECTIVE DATE FOR
 15 STATE LAW AMENDMENT.—In the case of a
 16 State plan under title XIX of the Social Secu-
 17 rity Act (42 U.S.C. 1396 et seq.) which the
 18 Secretary determines requires State legislation
 19 in order for the plan to meet the additional re-
 20 quirements imposed by the amendments made
 21 by paragraph (1), the State plan shall not be
 22 regarded as failing to comply with the require-
 23 ments of such title solely on the basis of its fail-
 24 ure to meet these additional requirements be-
 25 fore the first day of the first calendar quarter

1 beginning after the close of the first regular
 2 session of the State legislature that begins after
 3 the date of enactment of this Act. For purposes
 4 of the previous sentence, in the case of a State
 5 that has a 2-year legislative session, each year
 6 of the session is considered to be a separate
 7 regular session of the State legislature.

8 **SEC. 224. DELINEATION OF RESPECTIVE CARE RESPON-**
 9 **SIBILITIES OF HOSPICE PROGRAMS AND**
 10 **LONG-TERM CARE FACILITIES.**

11 Section 1888 of the Social Security Act (42 U.S.C.
 12 1395yy), as amended by section 223(a), is amended by
 13 adding at the end the following new subsection:

14 “(g) DELINEATION OF RESPECTIVE CARE RESPON-
 15 SIBILITIES OF HOSPICE PROGRAMS AND LONG-TERM
 16 CARE FACILITIES.—Not later than July 1, 2011, the Sec-
 17 retary, acting through the Administrator of the Centers
 18 for Medicare & Medicaid Services, shall delineate and en-
 19 force the respective care responsibilities of hospice pro-
 20 grams and long-term care facilities (as defined by the Sec-
 21 retary for purposes of title XIX) with respect to individ-
 22 uals residing in such facilities who are furnished hospice
 23 care.”.

1 **SEC. 225. ADOPTION OF MEDPAC HOSPICE PROGRAM ELI-**
2 **GIBILITY CERTIFICATION AND RECERTIFI-**
3 **CATION RECOMMENDATIONS.**

4 In accordance with the recommendations of the Medi-
5 care Payment Advisory Commission contained in the
6 March 2009 report entitled “Report to Congress: Medi-
7 care Payment Policy”, section 1814(a)(7) of the Social Se-
8 curity Act (42 U.S.C. 1395f(a)(7)) is amended—

9 (1) in subparagraph (B), by striking “and” at
10 the end; and

11 (2) by adding at the end the following new sub-
12 paragraph:

13 “(D) on or after January 1, 2011—

14 “(i) a hospice physician or advance
15 practice nurse visits the individual to de-
16 termine continued eligibility of the indi-
17 vidual for hospice care prior to the 180th-
18 day recertification and each subsequent re-
19 certification under subparagraph (A)(ii)
20 and attests that such visit took place (in
21 accordance with procedures established by
22 the Secretary, in consultation with the Ad-
23 ministrator of the Centers for Medicare &
24 Medicaid Services); and

25 “(ii) any certification or recertification
26 under subparagraph (A) includes a brief

1 narrative describing the clinical basis for
 2 the individual’s prognosis (in accordance
 3 with procedures established by the Sec-
 4 retary, in consultation with the Adminis-
 5 trator of the Centers for Medicare & Med-
 6 icaid Services); and”.

7 **SEC. 226. CONCURRENT CARE FOR CHILDREN.**

8 (a) PERMITTING MEDICARE HOSPICE BENE-
 9 FICIARIES 18 YEARS OF AGE OR YOUNGER TO RECEIVE
 10 CURATIVE CARE.—

11 (1) IN GENERAL.—Section 1812 of the Social
 12 Security Act (42 U.S.C. 1395d) is amended—

13 (A) in subsection (a)(4), by inserting
 14 “(subject to the second sentence of subsection
 15 (d)(2)(A))” after “in lieu of certain other bene-
 16 fits”; and

17 (B) in subsection (d)—

18 (i) in paragraph (1), by inserting “ ,
 19 subject to the second sentence of para-
 20 graph (2)(A),” after “instead”; and

21 (ii) in paragraph (2)(A), by adding at
 22 the end the following new sentence:
 23 “Clause (ii)(I) shall not apply to an indi-
 24 vidual who is 18 years of age or younger.”

1 (2) CONFORMING AMENDMENT.—Section
 2 1862(a)(1)(C) of the Social Security Act (42 U.S.C.
 3 1395y(a)(1)(C)) is amended inserting “subject to
 4 the second sentence of section 1812(d)(2)(A),” after
 5 “hospice care,”.

6 (b) APPLICATION TO MEDICAID AND CHIP.—

7 (1) MEDICAID.—Section 1905(o)(1)(A) of the
 8 Social Security Act (42 U.S.C. 1395d(o)(1)(A)) is
 9 amended by inserting “(subject, in the case of an in-
 10 dividual who is a child, to the second sentence of
 11 such section)” after “section 1812(d)(2)(A)”.

12 (2) CHIP.—Section 2110(a)(23) of the Social
 13 Security Act (42 U.S.C. 1397jj(a)(23)) is amended
 14 by inserting “(concurrent, in the case of an indi-
 15 vidual who is a child, with care related to the treat-
 16 ment of the individual’s condition with respect to
 17 which a diagnosis of terminal illness has been
 18 made)” after “hospice care”.

19 (c) EFFECTIVE DATE.—The amendments made by
 20 this section shall apply to items and services furnished on
 21 or after January 1, 2011.

22 **SEC. 227. MAKING HOSPICE A REQUIRED BENEFIT UNDER**
 23 **MEDICAID AND CHIP.**

24 (a) MANDATORY BENEFIT.—

25 (1) MEDICAID.—

1 (A) IN GENERAL.—Section 1902(a)(10)(A)
 2 of the Social Security Act (42 U.S.C.
 3 1396a(a)(10)(A)), as amended by section
 4 211(b)(1), is amended in the matter preceding
 5 clause (i) by inserting “(18),” after “(17),”.

6 (B) CONFORMING AMENDMENT.—Section
 7 1902(a)(10)(C) of such Act (42 U.S.C.
 8 1396a(a)(10)(C)) is amended—

9 (i) in clause (iii)—

10 (I) in subclause (I), by inserting
 11 “and hospice care” after “ambulatory
 12 services”; and

13 (II) in subclause (II), by insert-
 14 ing “and hospice care” after “delivery
 15 services”; and

16 (ii) in clause (iv), by inserting “and
 17 (18)” after “(17)”.

18 (2) CHIP.—Section 2103(c)(9) of such Act (42
 19 U.S.C. 1397cc(c)(9)), as added by section
 20 211(c)(2)(A), is amended by inserting “and hospice
 21 care” before the period.

22 (b) EFFECTIVE DATE.—The amendments made sub-
 23 section (a) take effect on January 1, 2011.

1 **SEC. 228. MEDICARE HOSPICE PAYMENT MODEL DEM-**
2 **ONSTRATION PROJECTS.**

3 (a) ESTABLISHMENT.—Not later than July 1, 2012,
4 the Secretary, acting through the Administrator of the
5 Centers for Medicare & Medicaid Services and the Direc-
6 tor of the Agency for Healthcare Research and Quality,
7 shall conduct demonstration projects to examine ways to
8 improve how the Medicare hospice care benefit predicts
9 disease trajectory. Projects shall include the following
10 models:

11 (1) Models that better and more appropriately
12 care for, and transition as needed, patients in their
13 last years of life who need palliative care, but do not
14 qualify for hospice care under the Medicare hospice
15 eligibility criteria.

16 (2) Models that better and more appropriately
17 care for long-term patients who are not recertified in
18 hospice but still need palliative care.

19 (3) Any other models determined appropriate
20 by the Secretary.

21 (b) WAIVER AUTHORITY.—The Secretary may waive
22 compliance of such requirements of titles XI and XVIII
23 of the Social Security Act as the Secretary determines nec-
24 essary to conduct the demonstration projects under this
25 section.

1 (c) REPORTS.—The Secretary shall submit to Con-
 2 gress periodic reports on the demonstration projects con-
 3 ducted under this section.

4 **SEC. 229. MEDPAC STUDIES AND REPORTS.**

5 (a) STUDY AND REPORT REGARDING AN ALTER-
 6 NATIVE PAYMENT METHODOLOGY FOR HOSPICE CARE
 7 UNDER THE MEDICARE PROGRAM.—

8 (1) STUDY.—The Medicare Payment Advisory
 9 Commission (in this section referred to as the “Com-
 10 mission”) shall conduct a study on the establishment
 11 of a reimbursement system for hospice care fur-
 12 nished under the Medicare program that is based on
 13 diagnoses. In conducting such study, the Commis-
 14 sion shall use data collected under new provider data
 15 requirements. Such study shall include an analysis
 16 of the following:

17 (A) Whether such a reimbursement system
 18 better meets patient needs and better cor-
 19 responds with provider resource expenditures
 20 than the current system.

21 (B) Whether such a reimbursement system
 22 improves quality, including facilitating stand-
 23 ardization of care toward best practices and di-
 24 agnoses-specific clinical pathways in hospice.

1 (C) Whether such a reimbursement system
 2 could address concerns about the blanket 6-
 3 month terminal prognosis requirement in hos-
 4 pice.

5 (D) Whether such a reimbursement system
 6 is more cost effective than the current system.

7 (E) Any other areas determined appro-
 8 priate by the Commission.

9 (2) REPORT.—Not later than June 15, 2013,
 10 the Commission shall submit to Congress a report
 11 on the study conducted under subsection (a) to-
 12 gether with recommendations for such legislation
 13 and administrative action as the Commission deter-
 14 mines appropriate.

15 (b) STUDY AND REPORT REGARDING RURAL HOS-
 16 PICE TRANSPORTATION COSTS UNDER THE MEDICARE
 17 PROGRAM.—

18 (1) STUDY.—The Commission shall conduct a
 19 study on rural Medicare hospice transportation mile-
 20 age to determine potential Medicare reimbursement
 21 changes to account for potential higher costs.

22 (2) REPORT.—Not later than June 15, 2013,
 23 the Commission shall submit to Congress a report
 24 on the study conducted under subsection (a) to-
 25 gether with recommendations for such legislation

1 and administrative action as the Commission deter-
2 mines appropriate.

3 (c) EVALUATION OF REIMBURSEMENT DISINCEN-
4 TIVES TO ELECT MEDICARE HOSPICE WITHIN THE
5 MEDICARE SKILLED NURSING FACILITY BENEFIT.—

6 (1) STUDY.—The Commission shall conduct a
7 study to determine potential Medicare reimburse-
8 ment changes to remove Medicare reimbursement
9 disincentives for patients in a skilled nursing facility
10 who want to elect hospice.

11 (2) REPORT.—Not later than June 15, 2013,
12 the Commission shall submit to Congress a report
13 on the study conducted under subsection (a) to-
14 gether with recommendations for such legislation
15 and administrative action as the Commission deter-
16 mines appropriate.

17 **SEC. 230. HHS EVALUATIONS.**

18 (a) EVALUATION OF ACCESS TO HOSPICE AND HOS-
19 PITAL-BASED PALLIATIVE CARE.—

20 (1) EVALUATION.—The Secretary, acting
21 through the Administrator of the Health Resources
22 and Services Administration, shall conduct an eval-
23 uation of geographic areas and populations under-
24 served by hospice and hospital-based palliative care
25 to identify potential barriers to access.

1 (2) REPORT.—Not later than December 31,
2 2012, the Secretary shall report to Congress, on the
3 evaluation conducted under subsection (a) together
4 with recommendations for such legislation and ad-
5 ministrative action as the Secretary determines ap-
6 propriate to address barriers to access to hospice
7 and hospital-based palliative care.

8 (b) EVALUATION OF AWARENESS AND USE OF HOS-
9 PICE RESPITE CARE UNDER MEDICARE, MEDICAID, AND
10 CHIP.—

11 (1) EVALUATION.—The Secretary, acting
12 through the Director of the Centers for Medicare
13 and Medicaid Services, shall evaluate the awareness
14 and use of hospice respite care by informal care-
15 givers of beneficiaries under Medicare, Medicaid,
16 and CHIP.

17 (2) REPORT.—Not later than December 31,
18 2010, the Secretary shall report to Congress, on the
19 evaluation conducted under subsection (a) together
20 with recommendations for such legislation and ad-
21 ministrative action as the Secretary determines ap-
22 propriate to increase awareness or use of hospice
23 respite care under Medicare, Medicaid, and CHIP.

1 **Subtitle C—Quality Improvement**

2 **SEC. 241. PATIENT SATISFACTION SURVEYS.**

3 Not later than January 1, 2012, the Secretary, acting
4 through the Administrator of the Centers for Medicare &
5 Medicaid Services, shall establish a mechanism for—

6 (1) collecting information from patients (or
7 their health care proxies or families members in the
8 event patients are unable to speak for themselves) in
9 relevant provider settings regarding their care at the
10 end of life; and

11 (2) incorporating such information in a timely
12 manner into mechanisms used by the Administrator
13 to provide quality of care information to consumers,
14 including the Hospital Compare and Nursing Home
15 Compare websites maintained by the Administrator.

16 **SEC. 242. DEVELOPMENT OF CORE END-OF-LIFE CARE** 17 **QUALITY MEASURES ACROSS EACH REL-** 18 **EVANT PROVIDER SETTING.**

19 (a) IN GENERAL.—The Secretary, acting through the
20 Administrator of the Agency for Healthcare Research and
21 Quality (in this section referred to as the “Adminis-
22 trator”) and in consultation with the Director of the Na-
23 tional Institutes of Health, shall require specific end-of-
24 life quality measures for each relevant provider setting,

1 as identified by the Administrator, in accordance with the
2 requirements of subsection (b).

3 (b) REQUIREMENTS.—For purposes of subsection
4 (a), the requirements specified in this subsection are the
5 following:

6 (1) Selection of the specific measure or meas-
7 ures for an identified provider setting shall be—

8 (A) based on an assessment of what is
9 likely to have the greatest positive impact on
10 quality of end-of-life care in that setting; and

11 (B) made in consultation with affected pro-
12 viders and public and private organizations,
13 that have developed such measures.

14 (2) The measures may be structure-oriented,
15 process-oriented, or outcome-oriented, as determined
16 appropriate by the Administrator.

17 (3) The Administrator shall ensure that report-
18 ing requirements related to such measures are im-
19 posed consistent with other applicable laws and reg-
20 ulations, and in a manner that takes into account
21 existing measures, the needs of patient populations,
22 and the specific services provided.

23 (4) Not later than—

1 (A) April 1, 2011, the Secretary shall dis-
 2 seminate the reporting requirements to all af-
 3 fected providers; and

4 (B) April 1, 2012, initial reporting relating
 5 to the measures shall begin.

6 **SEC. 243. ACCREDITATION OF HOSPITAL-BASED PALLIA-**
 7 **TIVE CARE PROGRAMS.**

8 (a) IN GENERAL.—The Secretary, acting through the
 9 Director of the Agency for Healthcare Research and Qual-
 10 ity, shall designate a public or private agency, entity, or
 11 organization to develop requirements, standards, and pro-
 12 cedures for accreditation of hospital-based palliative care
 13 programs.

14 (b) REPORTING.—Not later than January 1, 2012,
 15 the Secretary shall prepare and submit a report to Con-
 16 gress on the proposed accreditation process for hospital-
 17 based palliative care programs.

18 (c) ACCREDITATION.—Not later than July 1, 2012,
 19 the Secretary shall—

20 (1) establish and promulgate standards and
 21 procedures for accreditation of hospital-based pallia-
 22 tive care programs; and

23 (2) designate an agency, entity, or organization
 24 that shall be responsible for certifying such pro-

1 grams in accordance with the standards established
 2 under paragraph (1).

3 (d) DEFINITIONS.—For the purposes of this section:

4 (1) The term “hospital-based palliative care
 5 program” means a hospital-based program that is
 6 comprised of an interdisciplinary team that special-
 7 izes in providing palliative care services and con-
 8 sultations in a variety of health care settings, includ-
 9 ing hospitals, nursing homes, and home and commu-
 10 nity-based services.

11 (2) The term “interdisciplinary team” means a
 12 group of health care professionals (consisting of, at
 13 a minimum, a doctor, a nurse, and a social worker)
 14 that have received specialized training in palliative
 15 care.

16 **SEC. 244. SURVEY AND DATA REQUIREMENTS FOR ALL**
 17 **MEDICARE PARTICIPATING HOSPICE PRO-**
 18 **GRAMS.**

19 (a) HOSPICE SURVEYS.—Section 1861(dd) of the So-
 20 cial Security Act (42 U.S.C. 1395x(dd)) is amended by
 21 adding at the end the following new paragraph:

22 “(6) In accordance with the recommendations of the
 23 Medicare Payment Advisory Commission contained in the
 24 March 2009 report entitled ‘Report to Congress: Medicare
 25 Payment Policy’, the Secretary shall establish, effective

1 July 1, 2010, the following survey requirements for hos-
 2 pice programs:

3 “(A) Any hospice program seeking initial cer-
 4 tification under this title on or after that date shall
 5 be subject to an initial survey by an appropriate
 6 State or local agency, or an approved accreditation
 7 agency, not later than 6 months after the program
 8 first seeks such certification.

9 “(B) All hospice programs certified for partici-
 10 pation under this title shall be subject to a standard
 11 survey by an appropriate State or local agency, or
 12 an approved accreditation agency, at least every 3
 13 years after initially being so certified.”.

14 (b) REQUIRED HOSPICE RESOURCE INPUTS DATA.—
 15 Section 1861(dd) of the Social Security Act (42 U.S.C.
 16 1395x(dd)), as amended by subsection (a), is amended—

17 (1) in paragraph (3)—

18 (A) in subparagraph (F), by striking
 19 “and” at the end;

20 (B) by redesignating subparagraph (G) as
 21 subparagraph (H); and

22 (C) by inserting after subparagraph (F)
 23 the following new subparagraph:

24 “(G) to comply with the reporting requirements
 25 under paragraph (7); and”; and

1 (2) by adding at the end the following new
2 paragraph:

3 “(7)(A) In accordance with the recommenda-
4 tions of the Medicare Payment Advisory Commission
5 for additional data (as contained in the March 2009
6 report entitled ‘Report to Congress: Medicare Pay-
7 ment Policy’), beginning January 1, 2011, a hospice
8 program shall report to the Secretary, in such form
9 and manner, and at such intervals, as the Secretary
10 shall require, the following data with respect to each
11 patient visit:

12 “(i) Visit type (such as admission, routine,
13 emergency, education for family, other).

14 “(ii) Visit length.

15 “(iii) Professional or paraprofessional dis-
16 ciplines involved in the visit, including nurse,
17 social worker, home health aide, physician,
18 nurse practitioner, chaplain or spiritual coun-
19 selor, counselor, dietician, physical therapist,
20 occupational therapist, speech language patholo-
21 gist, music or art therapist, and including be-
22 reavement and support services provided to a
23 family after a patient’s death.

24 “(iv) Drugs and other therapeutic inter-
25 ventions provided.

1 “(v) Home medical equipment and other
2 medical supplies provided.

3 “(B) In collecting the data required under sub-
4 paragraph (A), the Secretary shall ensure that the
5 data are reported in a manner that allows for sum-
6 marized cross-tabulations of the data by patients’
7 terminal diagnoses, lengths of stay, age, sex, and
8 race.”.

9 **Subtitle D—Additional Reports,**
10 **Research, and Evaluations**

11 **SEC. 251. NATIONAL CENTER ON PALLIATIVE AND END-OF-**
12 **LIFE CARE.**

13 Part E of title IV of the Public Health Service Act
14 (42 U.S.C. 287 et seq.) is amended by adding at the end
15 the following:

16 **“Subpart 7—National Center on Palliative and End-**
17 **of-Life Care**

18 **“SEC. 485J. NATIONAL CENTER ON PALLIATIVE AND END-**
19 **OF-LIFE CARE.**

20 “(a) ESTABLISHMENT.—Not later than July 1, 2011,
21 there shall be established within the National Institutes
22 of Health, a National Center on Palliative and End-of-
23 Life Care (referred to in this section as the ‘Center’).

1 “(b) PURPOSE.—The general purpose of the Center
2 is to conduct and support research relating to palliative
3 and end-of-life care interventions and approaches.

4 “(c) ACTIVITIES.—The Center shall—

5 “(1) develop and continuously update a re-
6 search agenda with the goal of—

7 “(A) providing a better biomedical under-
8 standing of the end of life; and

9 “(B) improving the quality of care and life
10 at the end of life; and

11 “(2) provide funding for peer-review-selected
12 extra- and intra-mural research that includes the
13 evaluation of existing, and the development of new,
14 palliative and end-of-life care interventions and ap-
15 proaches.”.

16 **SEC. 252. NATIONAL MORTALITY FOLLOWBACK SURVEY.**

17 (a) IN GENERAL.—Not later than December 31,
18 2010, and annually thereafter, the Secretary, acting
19 through the Director of the Centers for Disease Control
20 and Prevention, shall renew and conduct the National
21 Mortality Followback Survey (referred to in this section
22 as the “Survey”) to collect data on end-of-life care.

23 (b) PURPOSE.—The purpose of the Survey shall be
24 to gain a better understanding of current end-of-life care
25 in the United States.

1 (c) QUESTIONS.—

2 (1) IN GENERAL.—In conducting the Survey,
3 the Director of the Centers for Disease Control and
4 Prevention shall, at a minimum, include the fol-
5 lowing questions with respect to the loved one of a
6 respondent:

7 (A) Did he or she have an advance direc-
8 tive, and if so, when it was completed.

9 (B) Did he or she have an order for life-
10 sustaining treatment, and if so, when was it
11 completed.

12 (C) Did he or she have a durable power of
13 attorney, and if so, when it was completed.

14 (D) Had he or she discussed his or her
15 wishes with loved ones, and if so, when.

16 (E) Had he or she discussed his or her
17 wishes with his or her physician, and if so,
18 when.

19 (F) In the opinion of the respondent, was
20 he or she satisfied with the care he or she re-
21 ceived in the last year of life and in the last
22 week of life.

23 (G) Was he or she cared for by hospice,
24 and if so, when.

1 (H) Was he or she cared for by palliative
2 care specialists, and if so, when.

3 (I) Did he or she receive effective pain
4 management (if needed).

5 (J) What was the experience of the main
6 caregiver (including if such caregiver was the
7 respondent), and whether he or she received
8 sufficient support in this role.

9 (2) ADDITIONAL QUESTIONS.—Additional ques-
10 tions to be asked during the Survey shall be deter-
11 mined by the Director of the Centers for Disease
12 Control and Prevention on an ongoing basis with
13 input from relevant research entities.

14 **SEC. 253. DEMONSTRATION PROJECTS FOR USE OF TELE-**
15 **MEDICINE SERVICES IN ADVANCE CARE**
16 **PLANNING.**

17 (a) IN GENERAL.—Not later than July 1, 2013, the
18 Secretary shall establish a demonstration program to re-
19 imburse eligible entities for costs associated with the use
20 of telemedicine services (including equipment and connec-
21 tion costs) to provide advance care planning consultations
22 with geographically distant physicians and their patients.

23 (b) DURATION.—The demonstration project under
24 this section shall be conducted for at least a 3-year period.

25 (c) DEFINITIONS.—For purposes of this section:

1 (1) The term “eligible entity” means a physi-
2 cian or an advance practice nurse who provides serv-
3 ices pursuant to a hospital-based palliative care pro-
4 gram (as defined in section 262(d)(1)).

5 (2) The term “geographically distant” has the
6 meaning given that term by the Secretary for pur-
7 poses of conducting the demonstration program es-
8 tablished under this section.

9 (3) The term “telemedicine services” means a
10 service or consultation provided via telecommuni-
11 cation equipment that allows an eligible entity to ex-
12 change or discuss medical information with a patient
13 or a health care professional at a separate location
14 through real-time videoconferencing, or a similar for-
15 mat, for the purpose of providing health care diag-
16 nosis and treatment.

17 (d) FUNDING.—There are authorized to be appro-
18 priated to the Secretary such sums as may be necessary
19 to carry out this section.

20 **SEC. 254. INSPECTOR GENERAL INVESTIGATION OF FRAUD**
21 **AND ABUSE.**

22 In accordance with the recommendations of the Medi-
23 care Payment Advisory Commission for additional data
24 (as contained in the March 2009 report entitled “Report
25 to Congress: Medicare Payment Policy”), the Secretary

1 shall direct the Office of the Inspector General of the De-
2 partment of Health and Human Services to investigate,
3 not later than January 1, 2012, the following with respect
4 to hospice benefit under Medicare, Medicaid, and CHIP:

5 (1) The prevalence of financial relationships be-
6 tween hospices and long-term care facilities, such as
7 nursing facilities and assisted living facilities, that
8 may represent a conflict of interest and influence ad-
9 missions to hospice.

10 (2) Differences in patterns of nursing home re-
11 ferrals to hospice.

12 (3) The appropriateness of enrollment practices
13 for hospices with unusual utilization patterns (such
14 as high frequency of very long stays, very short
15 stays, or enrollment of patients discharged from
16 other hospices).

17 (4) The appropriateness of hospice marketing
18 materials and other admissions practices and poten-
19 tial correlations between length of stay and defi-
20 ciencies in marketing or admissions practices.

21 **SEC. 255. GAO STUDY AND REPORT ON PROVIDER ADHER-**
22 **ENCE TO ADVANCE DIRECTIVES.**

23 Not later than January 1, 2012, the Comptroller
24 General of the United States shall conduct a study of the
25 extent to which providers comply with advance directives

1 under the Medicare and Medicaid programs and shall sub-
2 mit a report to Congress on the results of such study, to-
3 gether with such recommendations for administrative or
4 legislative changes as the Comptroller General determines
5 appropriate.

